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| Protest of |) | Date: March 21, 1991 |
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| TRAVELCO, INC. |) | |
| |) | |
| Solicitation No. 419990-90-A-0093 |) | P.S. Protest No. 91-10 |

DECISION

Travelco, Inc. protests the award of a contract for the operation of a Travel Management Center ("TMC") to Omega World Travel, Inc. ("Omega"). Travelco, the incumbent provider of TMC services, alleges that its technical proposal was unfairly and arbitrarily evaluated, and therefore prematurely excluded from the competitive range.

Solicitation No. 419990-90-A-0093 was issued by the Philadelphia Procurement and Material Management Service Center on August 3, 1990, with a due date of September 3, later extended to September 21. The solicitation sought offers for a contractor to operate a TMC for the Eastern Region. The TMC was to be operated by a commercial travel agency which would provide and arrange for air and rail transportation, auto rental, lodging and other travel related services required for official and personal travel of the Eastern Region postal employees.

The solicitation stated that award would be made to the responsible offeror who submitted the best combination of technical proposal, price, business/management proposal and other factors considered. The technical proposals were evaluated based upon the factors listed below and a possible total of 350 points:

| <u>Evaluation Criteria</u> | <u>Possible Points</u> |
|--|------------------------|
| Understanding Statement of Work | 25 |
| Project Management | 50 |
| Equipment Capability | 50 |
| Qualification and Organization Structure | 75 |
| Financial Capability | 50 |
| Accreditation | 25 |
| Emergency Service | 15 |
| Favorable Rate Controls | 60 |
| Total Possible Points | 350 |

Eight proposals were received. All offers were reviewed by the technical committee.

Of these eight proposals, five, including Travelco's, were excluded from the competitive range, based upon the seriousness of their proposal deficiencies and the extent of revision needed to make the proposals acceptable. Travelco received 190 points on its technical proposal, the lowest score of the eight proposals received.

The contracting officer notified Travelco by letter dated December 17, 1990, of its exclusion from the competitive range. That letter stated, in pertinent part:

Your proposal could not be included in the competitive range because it does not reasonably address the essential requirements of the solicitation.

By letter dated December 19, Travelco responded, expressing its distress over being excluded, requesting a debriefing and adding that "upon the conclusion of this debriefing meeting, Travelco will then further explore all avenues of remedy available to us."

The contracting officer responded, by letter dated December 21, that Travelco's request for a debriefing would be honored after award had been made.

Award was made to Omega on January 9; Travelco was given written notification of the award on that date. Travelco was debriefed on January 17; its written protest dated January 18 was received on January 22.

In its protest, Travelco contends, through counsel, that it was improperly penalized for omitting financial statements, for failing to itemize past commercial customers, and for problems with its after hours telephone number, even though the solicitation did not require these items. The protester states that it was given a low score in one area for not providing self-operating satellite ticket printers ("STPs") which it asserts it did offer.

The protester disagrees with the score assigned for the experience of its personnel, claiming that relevant evidence of its personnel's experience was included in its proposal, and that the Postal Service is well aware of its capabilities since it is the incumbent contractor for these services.

In his report on the protest, the contracting officer states that since Travelco was notified of its exclusion from the competitive range on December 17, its protest is untimely since it was filed more than ten working days after that date. Concerning the protester's contentions that it was penalized for omitting items which the solicitation did not require, he points out that the technical evaluation criteria specifically did require the submission of financial statements, citing section M.3, "Contract Award and Proposal Evaluation" which stated:

Financial Capability

* * *

(b) The offeror shall indicate if he/she has the necessary financial capacity, working capital and or other resources to perform the contract. To document this capacity, the offeror shall provide a financial plan for undertaking the statement of work, and copies of a current verified financial statement.

(c) Offeror shall submit a copy of his/her current financial statements (Balance Sheet and Profit and Loss Statement) not more than 90 days old with his/her

offer. Evidence of financial stability as indicated by the offeror's credit history will be a critical aspect of the evaluation.

The contracting officer explains further that Travelco was not penalized simply for failing to list other commercial customers but because it failed to address all of the requirements listed in the technical section entitled Qualifications and Organization Structure. Similarly, he explains that Travelco was given a lower score in the Emergency Service section because it offered an after-hours phone number belonging to another business. He adds that Travelco's description of its satellite ticket printers did not demonstrate that the printers operate in the manner preferred by the Postal Service, as described in the solicitation.

Omega, through counsel, submitted comments agreeing with and supporting the contracting officer's statement. It characterizes Travelco's protest as demanding that its prior service as the incumbent on this requirement be factored into its technical evaluation. Omega asserts that status as an incumbent contractor does not confer special standing nor relieve the offeror of its burden of providing, in response to the new solicitation, evidence of its capabilities.^{1/}

Travelco responds to the contracting officer's statement, solidifying all the reasons for its exclusion from the competitive range, not just the ones given during its debriefing. Further, the protester requests the technical evaluations of the top three offerors on those points that Travelco disagrees with in its own evaluation. Travelco insists that this protest cannot be resolved without it being informed how other offerors responded to the solicitation and were evaluated.

Travelco reads Section J.1. h. of the solicitation as making the submission of financial statements optional. The protester finds the contracting officer's reference to Section M of the solicitation inappropriate, claiming that section does not relate to the appending of financial statements. It notes that these sections of the solicitation were not discussed during the debriefing, raising the possibility that the contracting officer is giving a ex post facto rationalization for the deduction of points from Travelco's proposal. Travelco adds that it submitted adequate information to support its commercial references and experience.

Travelco finds the changing reasons for its exclusion arbitrary and capricious and not in the best interests of the Postal Service. Travelco asks for a termination of the award and reevaluation of its proposal or a reissuance of the solicitation.

Discussion

We first address the timeliness of Travelco's protest. The Procurement Manual ("PM") states that "protests must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier. . . ." PM 4.5.4 d. The contracting officer asserts that Travelco's protest is

^{1/} Travelco responds that Omega misunderstood its comments concerning the Postal Service's knowledge of its current performance as the incumbent. Rather, Travelco wished to point to its current experience as the best evidence of its ability to handle this contract.

untimely because its protest was received more than ten days after Travelco was advised of its elimination from the competition.

The timeliness of a protest challenging elimination from a negotiated competition prior to award is a difficult subject on which decisions of the Comptroller General have shed light. We adopt the reasoning of one such decision here.

Offerors who are rejected from the competitive range usually are not provided detailed reasons for that action at the time they are furnished notice of rejection; for that reason, we have long recognized that the basis for protest in such cases will arise through a debriefing. Where, however, an offeror is provided the detailed basis for proposal rejection, a protest of the rejection must be filed within 10 days thereof, rather than 10 days after any subsequent debriefing. (Citations omitted.)

ANEFECO, Inc., Comp. Gen. Dec. B-225502, 87-1 CPD & 304, March 18, 1987; accord Huntington Laboratories, Inc., P.S. Protest No. 89-46, November 15, 1989. Although Travelco received a letter stating it had been excluded from the competitive range, that letter was extremely brief, and failed to detail the reasons for the exclusion. Travelco immediately requested a debriefing which Postal Service policy establishes can come only after award. See PM 4.1.5 j. It was only at the debriefing that Travelco was given an analysis of the evaluation of its technical proposal sufficient to provide the basis for its protest. Since Travelco protested within ten working days of its debriefing, its protest is timely.^{1/}

On the merits, we note that this office will not substitute its judgment for that of the technical evaluators, nor will we disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. LazerData Corporation, P.S. Protest No. 89-60, September 29, 1989; Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the contracting officer's judgment does not meet its burden of proving that the

^{2/} Coopers & Lybrand, P.S. Protest No. 89-91, March 21, 1990, is not to the contrary. Coopers & Lybrand was one of two firms within the competitive range. On November 7, it was advised of the contracting officer's intention to award to the other firm. On November 22, it requested a debriefing. Award was made on November 28. Coopers' debriefing was held on December 18; its protest was dated December 19. The protest was found to be untimely because the basis for the protest, the difference in evaluated price between Coopers' proposal and that of the successful offeror, was "known or should have been known" at the time of award, not at the later time when the debriefing occurred. Here, on the other hand, no action prior to the debriefing gave Travelco a basis for its protest.

technical evaluation was unreasonable. (Citations omitted.)

Computer Systems & Resources, supra.

Travelco's request for the evaluations of the other offerors cannot, under the procurement regulations, be honored. In neither the debriefing process (PM 4.1.5 j.3) nor the bid protest forum^{1/} is it appropriate to make the various technical evaluations available for point-by-point criticism by unsuccessful proponents.

Our review of the evaluation committee's report reveals that the contracting officer's judgment was not arbitrary or unreasonable. National Capital Medical Foundation, Inc., Comp. Gen. Dec. B-215303.5, 85-1 CPD & 637, June 4, 1985. Travelco misreads the solicitation when it asserts that the technical proposal did not require the offerors' submission of financial statements. Section M.3 of the solicitation requires offerors to document their financial capacity by providing a financial plan and copies of a current, verified financial statement. Since Travelco did not, the contracting officer reasonably could adopt the technical committee's decision to withhold points from Travelco's proposal for Financial Capability. In other sections as well, the protester's failure to address requirements of the statement of work or to address them only in a cursory manner was adequate grounds for the reduction of its score. See LazerData, supra.

Finally, the protester's declarations that its position as the incumbent should have somehow been recognized during the evaluation of its technical proposal is legally insupportable. "Even an incumbent contractor cannot rely on its incumbency -- and the contracting agency's familiarity with its product and prior performance -- as a substitute for submitting a technical proposal responsive to the solicitation and which demonstrates compliance with the stated evaluation criteria." Associated Aircraft Manufacturing and Sales, Inc., Comp. Gen. Dec. B-241639, 90-2 CPD & 366, November 5, 1990.

The protest is denied.

[Signed]

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[Compared to original 5/16/95 WJJ]

^{3/} In cases where parties do not have access to pertinent agency records, we examine the records in camera to determine if the contracting officer's actions had a reasonable basis. Sheldon Tranfer & Storage Co., P.S. Protest No. 91-08, March 13, 1991; see also Magnolia-Boyd Corp., et al., Comp. Gen. Dec. B-214716.1, .2, .3, 84-2 CPD & 388, October 5, 1984.